Supreme Court, U.S.
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No. 94-301

In the
SUPREME COURT OF THE UNITED STATES

October Term, 1994

James Kevin Craig,
Petitioner,

v.

California State Bar
Respondent

On Petition for a Writ of Certiorari to the
Supreme Court of the State of California

SUPPLEMENTAL BRIEF OF PETITIONER AND REPLY TO RESPONDENT'S BRIEF IN OPPOSITION

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Questions Presented

1) Does the "no religious test" phrase of Article VI, paragraph 3 of the United States Constitution, and the ruling in *Torcaso v. Watkins*, 367 U.S. 488, 81 S.Ct. 1680, 6 L.Ed.2d 982 (1961), which prohibited the states from requiring oaths of office the terms of which conform to the tenets of the religion of Christianity, also forbid the states from permitting an applicant to the Bar to swear voluntarily an oath the terms of which conform to the religion of Christianity?

2) Does this Court's ruling in *In re Summers* 325 U.S. 561; 65 S.Ct. 1307 (1945) (holding that a Christian pacifist who disagreed with that part of the constitution requiring military training could not take the "support oath" in good faith) forbid a prospective attorney at law, who declares the authority of God and of the Christian Scriptures to be superior to that of the State, from being admitted to the Bar for inability to take in good faith a required oath to "support the Constitution", contrary to the First Amendment?

3) In view of modern policy considerations of "Global Interdependence," does this Court's ruling in *In re Griffiths*, 413 U.S. 717, 93 S.Ct. 2851, 37 L.Ed.2d 910 (1973), holding that U.S. citizenship cannot be required for admission to the Bar, absolve an applicant to the Bar from taking an oath to "support the Constitution," which this Court has "substantially equated to that allegiance which, by the common law, every citizen was understood to owe to his sovereign."

SUPPLEMENTAL BRIEF OF PETITIONER AND REPLY TO RESPONDENT'S BRIEF IN OPPOSITION

Petitioner wishes to bring clarity to the Court on three issues which were misrepresented in Respondent's Brief Opposing Certiorari.

Petitioner would also beg the Court to consider recent legislation which was passed after Petitioner filed in the California Supreme Court, and was unknown to him when he filed his Petition for Certiorari.

A. The Oath and the National Religion

In his pleadings before the California Supreme Court, Petitioner clearly distinguished his views from Quakers and Anabaptists who choose to "affirm" rather than "swear."[1] Petitioner finds the distinction to be meaningless, and in any case actually prefers to take an "oath" rather than an "affirmation."

Respondent's discussion of this issue[2] obscures the heart of this litigation.

Nor is this case about "loyalty oaths" as opposed to a "forward-looking, promissory oath,"[3] and Respondent's discussion is not helpful to the Court.[4]

This case is about a National Religion.

Petitioner begins with the recognition that the act of swearing an Oath is a liturgy, a ritual, a part of religious worship. This has been the unquestioned understanding of the Oath since the earliest origins of the Common Law and Anglo-American jurisprudence. We must then ask, of *which religion* is the Oath a liturgical expression?

Petitioner's survey of the case law demonstrates clearly that at the time the Constitution and the Bill of Rights were

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1. *Petition for Writ of Mandate in the California Supreme Court*, Appendix A, "Petitioner's Religious Views," pp. 31ff.

2. Respondent's Brief in Opposition, at 2.

3. Respondent's Brief in Opposition, 5.

4. *Id.* at 5-7.

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tified, the Oath was seen as a Christian ritual, and the ms of oaths conformed to that religion.

But the holdings in cases such as *Holy Trinity*[5] have not n adhered to in the 20th century. Under strong pressure m adherents of the religion of Secular Humanism, the th (and law in general[6]) is now a liturgical expression of t non-Christian religion.[7] The *Torcaso* case explicitly tered the religion of the Oath from Christianity to Secular-

Legal scholars instantly recognize the central issue in s case: "Civil Religion," which employs the liturgical ns, psychological motivations, and social purposes of gion to buttress the power of the State.

Literally doze icles have appeared in the legal in jus years on this subject, and are the Oath as the epitome of

ly an arguable "Establish- understandably, there is cise among those who are d and are forced to "priva- ars, advocates of the religion everly disguised the imposition religion as "neutrality." But to petitioners like

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5. *Holy Trinity Church v. United States*, 143 U.S. 457, 12 S.Ct. 36 L.Ed. 226 (1892).

6. S. Levinson and R. Bellah, *A.A.L.S. Law and Religion Panel: as Our Civil Religion (Symposium: The Secularization of the Law)*, Mercer L. Rev. 477 (1980).

7. Or, more accurately, a "syncretism" or combination of the reli- ns of Christianity and Secular Humanism.

8. *Torcaso v. Watkins*, 367 U.S. 488, 81 S.Ct. 1680, 6 L.Ed.2d 82 (1961).

9. S. Levinson, *Pledging Faith in the Civil Religion: or, Would Sign the Constitution?*, 29 Wm & Mary L. Rev. 113 (1987). S. vinson, *Constitutional Faith* (1988).

10. G. Bradley, *Dogmatomachy -- A "Privatization" Theory of the ligious Clause Cases*, 30 St. Louis U.L.J. 275; S. Levinson, *The nfrontation of Religious Faith and Civil Religion: Catholics Becoming stices*, 39 De Paul. L. Rev. 1047 (1990).

Summers[11] and Macintosh,[12] such "neutrality" is indistinguishable from "hostility."

This forms the background for the concerns of traditional, non-secular religionists, which reached a peak after the decision of this Court in *Employment Div., Dept. of Human Resources of Ore. v. Smith,*[13] and culminated in the passage of the "Religious Freedom Restoration Act."[14] Petitioner brings that Act to the attention of this Court as being entirely consistent with the arguments raised before the California Supreme Court and dispositive of this case.[15]

Petitioner is confident that not one of the cases cited by Respondent in opposition to Certiorari[16] dealt with the issue raised by Petitioner in this case (the Oath as a ritual of Civil Religion), much less resolved the First Amendment issues it raises.

B. Hidden Right-Wing Agenda?

Respondent suggests that Petitioner seeks to impose a "Christian Theocracy," which would deny rights to adherents of the secular Civil Religion.

The Petition for Certiorari notes that Petitioner was at one time a part of a movement committed to precisely these goals, but Petitioner has since been formally and informally

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11. *In re Summers,* 325 U.S. 561, 65 S.Ct. 1307, 89 L.Ed. 1795 (1945) (holding that a Christian pacifist, disagreeing with that part of the Constitution requiring military training, could not take the "support oath" in "good faith.")

12. *U.S. v. Macintosh,* 283 U.S. 605, 51 S.Ct. 570, 75 L.Ed. 1302 (1931) ("unqualified allegiance to the nation" is "not inconsistent with the will of God.")

13. 494 U.S. 872, 110 S.Ct. 1595, 108 L.Ed2d 876 (1990).

14. Pub. L. 103-141, 107 Stat. 1488 (Nov. 16, 1993).

15. The Act was passed after Petitioner filed for extraordinary relief in the California Supreme Court (July 27, 1993), and Petitioner was unaware of its passage when Petition for Certiorari was filed in this Court. The leading cases holding against Petitioner (*Summers, Torcaso*) were handed down before the "compelling interest test" was articulated in 1963.

16. Respondent's Brief in Opposition, at 5-7. To be sure, the cases raised by Respondent are significant, and were thoroughly analyzed in pleadings before the California Supreme Court.

excommunicated from these groups because of his reluctance to politicize Biblical morality and for his opposition to state mandated test-oaths.[17] Petitioner suggests that this case is the ideal vehicle to pre-empt plans of the political theocrats to "return to the past" and impose a new Civil Religion.[18] Respondent's insinuations in this matter[19] are of no help to this Court.

C. "Anarchists" as "Officers of the Court"?

Respondent would also distract this Court by a pejorative use of the appellation "Anarchist."[20] Petitioner is undeniably a non-believer in the Civil Religion. His "anarchism" is the logical result of the pacifism on trial in *Summers*.[21] Can the state protect its legitimate interests if Petitioner, as a self-described "anarchist," becomes an "officer of the court"?

Petitioner eats, drinks, and sleeps Law. He has a passion for justice and order. He is in solidarity with the Founding Fathers' quest for Christian Virtue to characterize this land,[22] and is grieved and appalled, as they would be, at the violence and secular lawlessness of our nation today. Respondent understands that the Petitioner agrees to the second half of California's oath,[23] which he can do wholeheartedly, being committed to the "primary governmental

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17. Petition for Certiorari, 7, text at note 17.

18. Petition for Certiorari, 8, text at notes 21-23.

19. Brief for Respondent in Opposition, 9-12.

20. Brief for Respondent in Opposition, 9.

21. *Supra*, note 11. *See also* Petition for Writ of Mandate in the California Supreme Court, 9-13.

22. F. McDonald, "A Republic, Madam, If You Can Keep It," 4 *Notre Dame Journal of Law, Ethics & Public Policy* 7 (1989). D. Barton, *The Myth of Separation* (1992).

23. Brief for Respondent in Opposition, 2 n.1, requiring Petitioner "faithfully to discharge the duties of any attorney to the best of his knowledge and ability."

function of administering justice,"[24] and understanding the need "to secure the just, speedy, and inexpensive determination of every action."[25] As a Christian, Petitioner submits to "the powers that be,"[26] even as he "wrestles" with their "Civil Religion."[27]

CONCLUSION

Therefore, the Court should review the establishment of a "Civil Religion" in the decision of the California Supreme Court through a Writ of Certiorari.

Dated: October 7, 1994

Respectfully submitted,

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24. Brief for Respondent in Opposition, 8, citing *Goldfarb v. Virginia State Bar*, 421 U.S. at 792.

25. Federal Rules of Civil Procedure, Rule 1, 28 U.S.C.A.

26. *Romans* 13:1.

27. *Ephesians* 6:12.